IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FOURTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 19069 of 1997

Between:

Ms. Y.Suseela , D/o. Sri Y.Subba Rao,
Fish Farmers Development Agency, Kakinada,
East Godavari District.

..... PETITIONER

AND

1 The Principal Secretary to Government, Animal Hasbandry and Fisheries Dept., Govt., of A.P., Hyderabad.
2 The Director of Fisheries, Govt., of A.P., ,
Tank Bund Road, Hyderabad.
3 The Regional Deputy Director of Fisheries Zone.II,
Kakinada , E.G.District.
4 The District Collector/Chairman Fisher Farmers Development Agency,
Kakinada , E.G.District.
(As per court order dt.2.8.2000 dismissed for default as against R4.
5 Chief Executive Officer, Fish Farmers Development Agency,
Kakinada, E.G.Dist.
6 The Asst. Director of Fisheries
Kakinada, E.G.District.

(R-4 dismissed for default vide Court Order dt.2-8-2000)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order or direction more in the nature of Writ of Mandamus calling for the records relating to G.O.Ms.No.20 Animal Hasbandry and Fisheries (Fish.II) Department Dt.25.2.1997 , in so far as the discontinuance of the Fish Farmers Development Agency in East Godavari is concerned and the consequential order issued by the Respondent No.5 in his Memo.No.88/BFDA/97 dt.28.2.1997 and declare the same as illegal, arbitrary, unjust and unconstitutional while issuing a consequential direction to the respondents to continue the Fish Farmers

Development Agency scheme or in the alternate to absorb and regularise the petitioner either in the Fisheries Department or in any other Department with consequential and attendant benefits

Counsel for the Petitioner: MR.D.GOVARDHANACHARY

Counsel for the Respondents : Government Pleader FOR ANIMAL HUSBANDARY

The Court made the following :

ORDER:

The writ petitioner, Y.Suseela, filed the present Writ Petition for a writ of mandamus calling for records relating to G.O.Ms.No.20, Animal Husbandary and Fisheries (Fish.II) Department dated 25-2-1997 insofar as the discontinuance of the Fish Farmers Development Agency in East Godavari is concerned and the consequential order issued by the respondent No.5 in his Memo No.88/BFDA/97, dated 28-2-1997 and declare the same as illegal, arbitrary, unjust and unconstitutional while issuing a consequential direction to the respondents to continue the Fish Farmers Development Agency scheme or in the alternative to absorb and regularize the petitioner either in the Fisheries Department or in any other Department with consequential and attendant benefits and to pass such other suitable orders.

Sri Govardhana Chary, the learned Counsel representing the writ petitioner had pointed out that by virtue of the interim orders granted

by this Court, the writ petitioner is continuing in service even as on to this day. The learned Counsel also had pointed out that in fact, the name of the writ petitioner had been recommended but however despite the correspondence her services were not regularized. The learned Counsel also submitted that in the light of the present state of affairs, the District Collector is not concerned and hence the dismissal of the Writ Petition for default as against 4th respondent would not alter the situation in any way. The learned Counsel also submitted that the writ petitioner had been discriminated since the cases of similar nature already had been considered and those persons had been absorbed into service. The learned Counsel also pointed out to certain orders which had been filed before this Court in this regard. The learned Counsel also had drawn the attention of this Court to the contents of the counter affidavit and had submitted that in the peculiar facts and circumstances inasmuch as the writ petitioner is continuing in service even as on today, this is a fit case where the writ petitioner is entitled for the relief prayed for.

Per contra, the learned Government Pleader for Animal Husbandry had pointed out that the writ petitioner has no enforceable legal right inasmuch as the Scheme was discontinued and the writ petitioner was initially appointed as a Typist only on contract basis for a period of one year. In view of the changed circumstances, as a matter of fact, the writ petitioner cannot claim any relief whatsoever from the

hands of this Court. The learned Counsel in all fairness would submit that there is some correspondence and also certain recommendations had been made to consider the case of the writ petitioner sympathetically but however in view of the vacancy position and the Rules governing the field, the case of the writ petitioner cannot be considered for the reasons which had been well explained in the counter affidavit.

Heard both the Counsel.

The writ petitioner was appointed as a Typist on contract basis for a period of one year from 13-8-1983 to 12-8-1984 on a consolidated pay of Rs.1500/- per month and thereafter it was renewed for another one year with effect from 24-8-1994 to 23-8-1995. Thus she was in service for a period of two years. It was further averred that the writ petitioner had been discharging her duties to the best of her ability and the 3rd respondent through his letter No.957/A/94, dated 13-5-1994 addressed to the 2nd respondent recommended her case for regular appointment on humanitarian grounds since the writ petitioner is having two children and of the two, one is physically handicapped and she is a divorcee and she has no other source of income. It is also stated that the writ petitioner registered her name in the employment exchange with Regn.No.E1/93/02012, dated 14-6-1991. It is also further stated that the contract of the writ petitioner came to

an end by 23-8-1995 and thereafter when the 5th respondent had addressed a letter to 4th respondent seeking for continuance, the same was not accepted and the 5th respondent had been advised to obtain approval from the 2nd respondent/competent authority. It is specifically stated that the post in which the writ petitioner is working is a clear sanctioned vacant post and the same is evident from letter No.3525/A/95 dated 23-8-1995 addressed by 3rd respondent to 5th respondent. It is also further averred that even prior to the service of the impugned order on the writ petitioner, the 5th respondent addressed letter No.378/BFDA/95 dated 11-9-1995 to the 2nd respondent narrating the position of the writ petitioner in the office of 5th respondent and finally recommended continuance in the Agency and there is no response but in the meanwhile without waiting for any reply from the 2nd respondent, the impugned order terminating the services of the writ petitioner had been made. It is also further stated that there are various persons under the jurisdiction of the 2nd respondent who had not fulfilled the requirements of G.O.Ms.No.212 and despite the same the services of the said persons were regularized and the case of Ch.Chenchulaxmi also had been referred to as an example in para-6 of the affidavit filed in support of the Writ Petition. It is also stated that the writ petitioner belongs to Scheduled Caste and she is a divorcee. In the said circumstances, aggrieved by

the orders made by the 5th respondent dated 9-9-1995, the writ petitioner approached the A.P. Administrative Tribunal by filing O.A.No.5422/95 and got an interim order on 11-10-1995 which was subsequently extended until further orders by an order dated 23-11-1995 and by virtue of the same the writ petitioner continued in service till the Scheme was wound up on 28-2-1995. It was further stated that the 1st respondent issued G.O.Ms.No.20, Animal Husbandry and Fisheries Department dated 25-2-1997 ordering discontinuance of Brackishwater Fish Farmers Development Agency and later on the 2nd respondent through his Memo No.23825/B1/96 dated 21-2-1997 instructed the 3rd respondent to approach the 4th respondent for absorption of the persons appointed by the Agency. Accordingly, the 3rd respondent addressed letter No.899/A/97, dated 11-3-1997 to the 4th respondent furnishing particulars of the individuals including the writ petitioner, but however there was no follow up action in this regard. It was further stated that the 2nd respondent who is said to have addressed a letter No.57/B1/97, dated 5-1-1997 to the State Government for the discontinuance of the Schemes and on such recommendation the State Government issued G.O.Ms.No.20, dated 25-2-1997 discontinuing the scheme and no doubt certain grounds had been raised questioning the said action also. Thus, the writ petitioner had questioned the discontinuance of Agency and also the termination of her services.

In view of the subsequent events the O.A. filed by the writ petitioner could not be further prosecuted and the present Writ Petition was filed. This Court granted interim direction in W.P.M.P.No.25145/97 on 18-8-1997 directing the respondents to pay salary to the petitioner as before either by absorbing her in appropriate service or otherwise until further orders.

A counter affidavit in detail had been filed narrating the background and also the functions of Fish Farmers Development Agencies (F.F.D.As.) and the appointment of required staff in relation thereto and other particulars. It was also specifically averred that the scheme of F.F.D.A. was proposed to be dispensed in IX Five Year Plan owing to the following reasons:

1. Non-achievement of Targets by F.F.D.As. of State as assigned by Government of India.
2. On evaluation it was noticed that expenditure on development is less and expenditure on staff and contingencies more comparatively.
3. Due to limitation of funds allotted to Fisheries Department in IX Plan.
4. Development of Pisci-culture in private sector making Government sponsored F.F.D.As. redundant.

It was further averred that the Department had submitted proposals giving details of the plan schemes under implementation and

requested for orders regarding continuation by D.Fs. Lr.No.57/B1/97, dated 15-1-1997. After examining the proposals, Government had issued orders in G.O.Ms.No.20, Animal Husbandry and Fisheries dated 25-2-1997 ordering to discontinue the following schemes :

1. FFDAs,
2. BFDAs
3. Subsidy for exemption of Central Excise Duty on HSD oil supplied to the fishing boats.

Consequent upon issue of the above orders, the Department had repatriated all the employees sent on deputation to the agencies and adjusted them both in the vacancy posts and creating supernumerary posts to avoid retrenchment but it was noticed that 34 employees were recruited directly by the Agencies also available in the Agencies who could not be absorbed as they were not Government employees. Some of the employees had approached this Court and obtained orders for their regularization/continuation of services. Accordingly, in respect of the employees directly appointed by Agencies at Kurnool, Sangareddy, Karimnagar etc., had been regularized by the Agency indicating that their services will be restricted to the Agency only. In order to rehabilitate them, instructions were issued to all the RDDFs to approach the District Collectors and adjust them in other similar agencies at District Level. Except at Nalgonda District in other Districts, the District Collectors

had not adjusted them for the reason that there are no vacancies in other similar agencies at District Level and Act 14 of 1997 prohibiting appointment of Agency employees to Government Departments. After careful consideration by the Government to provide rehabilitation to the Agency employees, Government was pleased to issue orders providing financial package on the line with erstwhile H.A.L. employees by G.O.Ms.No.45, Animal Husbandry and Fisheries Department, dated 13-5-1997 and remove them under the provisions of Industrial Disputes Act. It was stated that the Industrial Disputes Act will not apply in this case in letter and spirit as the Agency staff were appointed by the Agency directly was registered under A.P. Public Societies Registration Act, 1860 but with a view to remove the hardship the following financial package had been proposed to rehabilitate them and as such Agency employees are prohibited to Government service as per Act 14 of 1997. The financial package benefit of (a) 45 days pay D.A. for each completed year of service had been worked out including (b) gratuity admissible 15/26 days for each completed year of service. Other statutory payment such as Notice Pay (Pay-DA) for 1 month/3 months and encashment of leave as per rules will be allowed. However, the amount proposed under (a) and (b) will be not less than Rs.30,000/-. Thus the claim of the petitioner for absorption into Government service is not tenable either on facts or in law since Act 14 of 1997 is a legal impediment

and thus the reason for taking the decision of closing the Scheme had been well explained in the counter affidavit.

It was admitted that the petitioner was appointed as a Typist on contract basis for a period of one year from 13-8-1993 to 12-8-1994 on a consolidated pay of Rs.1500/- per month by Proc.No.136/BFDA/95, dt.13-8-1995 of the 4th respondent and she continued upto 8-9-1995. It is stated that this is only an agreement between employee and the Agency and as such it will not bind the Government i.e., the Fisheries Department for continuation of the writ petitioner. Further, as per the pattern approved by the Government of India all the posts sanctioned in FFDAs (Agency) Scheme should be filled up by deputation and there is no provision for direct recruitment to any posts in the agency as clarified vide Commissioner of Fisheries Memo No.22372/A4/87, dated 29-10-1988. The services of the writ petitioner were terminated from 9-9-1995 as per Lr.No.378/BFDA/95, dated 9-9-1995 of the 5th respondent. Later, she had rejoined as Typist on 12-10-1995 in the office of the 5th respondent as per interim orders issued in O.A.No.5422/95 dated 11-10-1995. It was further stated that the writ petitioner made a representation to the 3rd respondent requesting to consider the case of the petitioner for regularization of services who had submitted proposals to the 2nd respondent in Lr.No.757/A/94, dated 13-5-1994 to consider the applicant's case on humanitarian grounds for

regularizing the services though she had not fulfilled the conditions of G.O.Ms.No.212. The stand taken by the writ petitioner that she had been working in clear vacancy no doubt had been denied. It was further stated that the 5th respondent in Lr.No.378/BFDA/95 dated 11-9-1995 addressed the 2nd respondent to continue the petitioner in service as Typist and no orders were received from the 2nd respondent and hence the 5th respondent had issued orders terminating the writ petitioner from 30-11-1993 on which she had approached the A.P. Administrative Tribunal as aforesaid. The continuance of the writ petitioner in the 5th respondent's office in pursuance of the interim orders made in O.A.No.5422/95 had been admitted. Further, the details relating to G.O.Ms.No.20 had been well explained and it was also stated that the 3rd respondent addressed the 4th respondent by Lr.No.699/A/97 dated 11-3-1997 to consider the absorption of the writ petitioner as Typist in any other District Level Agency in pursuance of the instructions issued by the 2nd respondent. It was further pleaded that it is a fact that the 5th respondent had issued termination orders in Memo No.88/BFDA dated 28-2-1997 as the scheme of BFDA was discontinued by G.O.Ms.No.20 dated 25-2-1997 with effect from 1-3-1997. It was further stated that in view of the orders made by this Court, the writ petitioner is being continued as a Typist in the office of the Assistant

Director of Fisheries, Kakinada.

On a close scrutiny of the factual matrix narrated supra, the fact that the writ petitioner has been continuing in service is not in serious controversy or dispute. The stand taken by the respondent in the counter affidavit is that the writ petitioner had not satisfied the conditions of G.O.Ms.No.212 and even otherwise her initial appointment was only on contract basis and the Government has nothing to do with the same. But however, specific stand was taken in the counter affidavit that the recommendations had been made for her regular absorption by considering her case sympathetically in the peculiar facts and circumstances.

In Rc.No.1524/B/99, dated 31-12-1999 addressed by the Additional Director of Fisheries to the Regional Deputy Director of Fisheries, Kakinada, it was stated :

> “Hence I request that the Commissioner of Fisheries, Andhra Pradesh Hyderabad may kindly be addressed to consider the representation by Smt.Y.Suseela for regularization of her services either as Typist or Junior Assistant in one of the existing vacancies and issue necessary orders in the matter at an early date.”

Reliance also was placed on the other proceedings and the correspondence in this regard and also certain orders where similar cases had been considered also are produced before this Court. Evidently, the writ petitioner is placing reliance on the orders passed

in relation to similarly placed persons to substantiate the ground of either arbitrary action or discrimination falling under Article 14 of the Constitution of India. It is no doubt true that the writ petitioner was initially appointed on contract basis and hence there is no employee and employer relationship as between the writ petitioner and the Government but the fact remains that the writ petitioner has been continuing in service for sufficiently a long time. It is also not in serious controversy that in certain cases, similarly placed persons had been accommodated and the relevant orders had been produced before this Court. When that being so, especially in the light of the recommendations made by the respondents already in this regard and also on the ground of equity, this Court is of the considered opinion that the case of the writ petitioner also to be considered on par with the cases of similarly placed persons whose cases already had been considered and who are being continued in service. This would be the just and proper order in the peculiar facts and circumstances.

Hence, the respondents are hereby directed to consider the case of the writ petitioner on par with the other cases which had been already considered and who are being continued in service and pass appropriate orders in this regard within a period of three months from the date of receipt of this order. It is needless to say that inasmuch as the writ petitioner is continuing in service, status-quo as on today to

be maintained and the writ petitioner be continued in service as such till appropriate orders are passed in this regard.

The Writ Petition is disposed of with the above directions. No order as to costs.

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Justice P.S. Narayana

Date : 4-2-2005

L.R. copy to be marked : YES / NO

To

One fair copy to Hon'ble Sri Justice P.S. Narayana (for his Lordship's kind perusal)

1. The Principal Secretary to Government, Animal Hasbandry and Fisheries Department, Government of A.P., Hyderabad.

2. The Director of Fisheries, Govt., of A.P., ,
   Tank Bund Road, Hyderabad.

3. The Regional Deputy Director of Fisheries Zone.II,
   Kakinada , East Godavari District.

4. The District Collector/Chairman Fisher Farmers Development Agency,
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   (As per court order dt.2.8.2000 dismissed for default as against R4.

5. Chief Executive Officer, Fish Farmers Development Agency,
   Kakinada, East Godavari District.

6. The Asst. Director of Fisheries
   Kakinada, East Godavari District.

7. 2 C.Cs. to Government Pleader for Fisheries, High Court of Andhra Pradesh, High Court Buildings, Hyderabad.

8. 8 L.R. copies

9. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

10. The Secretary, A.P. Advocates Association Library, High court Buildings, Hyderabad.

11. Two C.D. copies